

acquire the securities of additional EWGs, FUCOs, or QFs.

(9) A holding company, or a subsidiary of that company, that is regulated by the Board of Governors of the Federal Reserve Bank or by the Office of the Comptroller of the Currency, under the Bank Holding Company Act of 1956 as amended by the Gramm-Leach-Bliley Act of 1999, is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire and hold an unlimited amount of the securities of holding companies that include a transmitting utility or an electric utility company if such acquisitions and holdings are in the normal course of its business and the securities are held:

- (i) As a fiduciary;
- (ii) As principal for derivatives hedging purposes incidental to the business of banking and it commits not to vote such securities to the extent they exceed 10 percent of the outstanding shares;
- (iii) As collateral for a loan; or
- (iv) Solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years, with the following conditions and reporting requirement: The holding does not confer a right to control, positively or negatively, through debt covenants or any other means, the operation or management of the public utility or public utility holding company, except as to customary creditors' rights or as provided under the United States Bankruptcy Code; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held.

(10) Any holding company, or a subsidiary of that company, is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire any security of a public utility or a holding company that includes a public utility:

- (i) For purposes of conducting underwriting activities, subject to the condi-

tion that holdings that the holding company or its subsidiary are unable to sell or otherwise dispose of within 45 days are to be treated as holdings as principal and thus subject to a limitation of 10 percent of the stock of any class unless the holding company or its subsidiary has within that period filed an application under section 203 of the Federal Power Act to retain the securities and has undertaken not to vote the securities during the pendency of such application; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held;

- (ii) For purposes of engaging in hedging transactions, subject to the condition that if such holdings are 10 percent or more of the voting securities of a given class, the holding company or its subsidiary shall not vote such holdings to the extent that they are 10 percent or more.

(11) Any public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer a wholesale market-based rate contract to any other public utility affiliate that has the same ultimate upstream ownership, provided that neither affiliate is affiliated with a traditional public utility with captive customers.

[Order 669-A, 71 FR 28443, May 16, 2006]

§ 33.2 Contents of application—general information requirements.

Each applicant must include in its application, in the manner and form and in the order indicated, the following general information with respect to the applicant and each entity whose jurisdictional facilities or securities are involved:

- (a) The exact name of the applicant and its principal business address.
- (b) The name and address of the person authorized to receive notices and communications regarding the application, including phone and fax numbers, and E-mail addresses.
- (c) A description of the applicant, including:

(1) All business activities of the applicant, including authorizations by charter or regulatory approval (to be identified as Exhibit A to the application);

(2) A list of all energy subsidiaries and energy affiliates, percentage ownership interest in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged (to be identified as Exhibit B to the application);

(3) Organizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction (to be identified as Exhibit C to the application);

(4) A description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing, to which the applicant or its parent companies, energy subsidiaries, and energy affiliates is a party, unless the applicant demonstrates that the proposed transaction does not affect any of its business interests (to be identified as Exhibit D to the application);

(5) The identity of common officers or directors of parties to the proposed transaction (to be identified as Exhibit E to the application); and

(6) A description and location of wholesale power sales customers and unbundled transmission services customers served by the applicant or its parent companies, subsidiaries, affiliates and associate companies (to be identified as Exhibit F to the application).

(d) A description of jurisdictional facilities owned, operated, or controlled by the applicant or its parent companies, subsidiaries, affiliates, and associate companies (to be identified as Exhibit G to the application).

(e) A narrative description of the proposed transaction for which Commission authorization is requested, including:

(1) The identity of all parties involved in the transaction;

(2) All jurisdictional facilities and securities associated with or affected by the transaction (to be identified as Exhibit H to the application);

(3) The consideration for the transaction; and

(4) The effect of the transaction on such jurisdictional facilities and securities.

(f) All contracts related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction (to be identified as Exhibit I to the application).

(g) A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest. The applicant must include a general explanation of the effect of the transaction on competition, rates and regulation of the applicant by the Commission and state commissions with jurisdiction over any party to the transaction. The applicant should also file any other information it believes relevant to the Commission's consideration of the transaction. The applicant must supplement its application promptly to reflect in its analysis material changes that occur after the date a filing is made with the Commission, but before final Commission action. Such changes must be described and their effect on the analysis explained (to be identified as Exhibit J to the application).

(h) If the proposed transaction involves physical property of any party, the applicant must provide a general or key map showing in different colors the properties of each party to the transaction (to be identified as Exhibit K to the application).

(i) If the applicant is required to obtain licenses, orders, or other approvals from other regulatory bodies in connection with the proposed transaction, the applicant must identify the regulatory bodies and indicate the status of other regulatory actions, and provide a copy of each order of those regulatory

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bodies that relates to the proposed transaction (to be identified as Exhibit L to the application). If the regulatory bodies issue orders pertaining to the proposed transaction after the date of filing with the Commission, and before the date of final Commission action, the applicant must supplement its Commission application promptly with a copy of these orders.

(j) An explanation, with appropriate evidentiary support for such explanation (to be identified as Exhibit M to this application):

(1) Of how applicants are providing assurance, *based on facts and circumstances known to them or that are reasonably foreseeable*, that the proposed transaction will not result in, *at the time of the transaction or in the future*, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

(i) Disclosure of existing pledges and/or encumbrances of utility assets; and

(ii) A detailed showing that the transaction will not result in:

(A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements

subject to review under sections 205 and 206 of the Federal Power Act; or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

[Order 642, 65 FR 71014, Nov. 28, 2000, as amended by Order 669-A, 71 FR 28446, May 16, 2006; Order 669-B, 71 FR 42586, July 27, 2006; Order 659-B, 71 FR 45736, Aug. 10, 2006]

§ 33.3 Additional information requirements for applications involving horizontal competitive impacts.

(a)(1) The applicant must file the horizontal Competitive Analysis Screen described in paragraphs (b) through (f) of this section if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities (for purposes of this section, merging entities means any party to the proposed transaction or its parent companies, energy subsidiaries or energy affiliates).

(2) A horizontal Competitive Analysis Screen need not be filed if the applicant:

(i) Affirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*; and

(ii) No intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

(b) All data, assumptions, techniques and conclusions in the horizontal Competitive Analysis Screen must be accompanied by appropriate documentation and support.

(1) If the applicant is unable to provide any specific data required in this section, it must identify and explain how the data requirement was satisfied and the suitability of the substitute data.

(2) The applicant may provide other analyses for defining relevant markets (*e.g.* the Hypothetical Monopolist Test with or without the assumption of price discrimination) in addition to the delivered price test under the horizontal Competitive Analysis Screen.